

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 21 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE JESUS M.

) 2 CA-JV 2009-0091

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 12182506

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

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By Ellen Brown

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By Ken Sanders

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E C K E R S T R O M, Presiding Judge.

¶1 On July 9, 2009, the minor appellee, Jesus M., was adjudicated delinquent for a class two misdemeanor after he admitted having violated A.R.S. § 13-1602(A)(1)¹ by defacing or damaging a wall at Tucson Medical Center, causing damage of less than \$250.² Jesus was already on probation from an earlier delinquency adjudication when he committed the present offense; at the July 9 hearing, he also admitted the allegations of a petition to revoke probation filed on June 18, 2009.

¶2 At a combined disposition hearing on August 4, 2009, the juvenile court ordered Jesus continued on probation and ordered him to perform fifty hours of community service. The prosecutor asked the court to send a copy of the disposition minute entry to the Arizona Department of Transportation (ADOT) Motor Vehicle Division (MVD), pursuant to A.R.S. § 28-3320. The court declined, and the state appeals from that ruling.

¶3 Section 28-3320 requires ADOT to suspend the driver's license or driving permit of a minor who commits any one of a number of enumerated offenses, including any

¹The amendments to this statute since Jesus committed his offense on May 29, 2009, are not relevant to this appeal. *See* 2009 Ariz. Sess. Laws, ch. 144, § 2; 2009 Ariz. Sess. Laws, ch. 8, § 5; 1996 Ariz. Sess. Laws, ch. 361, § 2.

²The court's disposition minute entry mistakenly indicates Jesus violated "A.R.S. § 13-1602.A1-4." The petition charged him only with a violation of § 13-1602(A)(1). The juvenile court adjudicated him delinquent only as to this count, and the factual basis provided at the adjudication hearing only supports an adjudication under this subsection. We therefore correct the minute entry to appropriately reflect Jesus's adjudication for violating § 13-1602(A)(1).

violation of § 13-1602(A)(1). *See* § 28-3320(A)(3).³ However, as this court has recently observed, in contrast to other statutes that do expressly mandate reporting to MVD, § 28-3320 contains no such requirement. *In re Martin M.*, 572 Ariz. Adv. Rep. 27, ¶ 8 (Ct. App. Dec. 21, 2009). Thus, we held in *Martin M.*, “[I]t is for the juvenile court to decide, in the exercise of its discretion, whether to forward to MVD the record of a juvenile adjudicated delinquent for possessing marijuana.” *Id.* ¶ 14.

¶4 Our reasoning and holding in *Martin M.* are equally applicable to Jesus’s delinquency adjudication for criminal damage. And, for reasons akin to those in *Martin M.*, the record before us affords no basis on which we could conclude the juvenile court clearly abused its discretion by declining to forward to MVD a copy of the August 2009 disposition report. *See id.* ¶¶ 15-16. Moreover, it appears from the record that the court already had

³Section 28-3320 provides in pertinent part:

A. In addition to the grounds for mandatory suspension or revocation provided for in chapters 3, 4 and 5 of this title, the department shall immediately suspend the driver license or privilege to drive or refuse to issue a driver license or privilege to drive of a person who commits an offense while under eighteen years of age as follows:

....

3. Until the person’s eighteenth birthday on receiving the record of the person’s conviction for a violation of section 13-1602, subsection A, paragraph 1 or section 13-1604, subsection A involving the damage or disfigurement of property by graffiti.

notified MVD pursuant to § 28-3320(A)(8) in May 2009 following Jesus’s previous adjudication in February 2009 for knowingly being present in a means of transportation unlawfully possessed by another in violation of A.R.S. § 13-1803(A)(2), a class six felony, and for buying, possessing, or consuming liquor while underage in violation of A.R.S. § 4-244(9), a class one misdemeanor.⁴

¶5 Section 28-3320(A)(8) directs ADOT, on receiving the record of a juvenile’s “conviction” for violating § 13-1803, to suspend the juvenile’s driver’s license or privilege to drive “[u]ntil the person’s eighteenth birthday”—the same suspension period mandated for an adjudicated violation of § 13-1602(A)(1), pursuant to § 28-3320(A)(3). Thus, presumably the administrative consequence that would have been imposed on Jesus pursuant to § 28-3320(A)(3) as a result of this offense already had been imposed pursuant to § 28-3320(A)(8), so the juvenile court’s refusal to notify MVD separately of Jesus’s latest adjudication had no practical effect. Under the subsections of § 28-3320(A) implicated here, the additional notification would have made no difference in the amount of time Jesus’s privilege to drive would be suspended or withheld.

⁴The juvenile court separately notified MVD of Jesus’s adjudication for underage possession or consumption of alcohol in violation of § 4-244(9), presumably as a predicate for purposes of § 28-3320(A)(7) in the event he committed an additional violation of § 4-244(9). Section 28-3320(A)(7) dictates the suspension of a juvenile’s driver’s license or permit until the juvenile’s eighteenth birthday “or for a period of two years on receiving the record of the person’s conviction for a second or subsequent violation of § 4-244, paragraph 9, if ordered by the court.”

¶6 Finding neither legal error nor abuse of the juvenile court's discretion, we affirm its disposition order filed on August 17, 2009.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

GARYE L. VÁSQUEZ, Judge